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FILED

DISTRICT COURT OF GUAM

JAN 30 2007 *hba*

MARY L.M. MORAN
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

NANYA TECHNOLOGY CORP. AND
NANYA TECHNOLOGY CORP. U.S.A.,

Plaintiffs,

v.

FUJITSU LIMITED AND FUJITSU
MICROELECTRONICS AMERICA, INC.,

Defendants.

Case No. CV-06-00025

**PLAINTIFFS' MOTION TO EXCEED
NUMBER OF INTERROGATORIES AND
REQUESTS FOR ADMISSIONS**

[NO ORAL ARGUMENT REQUESTED]

COME NOW, Plaintiffs, Nanya Technology Corp. and Nanya Technology Corp. U.S.A., with their Motion to Exceed Number of Interrogatories and Requests for Admissions pursuant to the District Court of Guam's Local Rules of Practice, L.R. 33.1(a).

FACTUAL BACKGROUND

On, September 13, 2006, Plaintiffs Nanya Technology Corp. ("NTC") and Nanya Technology Corp. U.S.A. ("NTC USA") (collectively, "Plaintiffs") filed suit against Fujitsu Limited ("Fujitsu") and Fujitsu Microelectronics America, Inc. ("FMA") (collectively, "Defendants") in the United States

1 District Court of Guam for patent misuse, antitrust violations and patent infringement. In this case, the
2 Court will have to construe the claims and determine infringement or non-infringement of at least
3 fourteen (14) Fujitsu patents and at least four (4) NTC patents.

4 Pursuant to Local Rule 33.1, both parties are limited to one set of twenty-five or less
5 interrogatories or requests for admissions. In order to serve additional interrogatories or requests for
6 admissions, a party must submit to the Court a written memorandum setting forth the proposed
7 additional interrogatories or requests for admissions and the reasons establishing good cause for their
8 use.

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10 As this is a complex patent litigation case with multiple claims of patent infringement, anti-
11 trust violations and patent misuse, Plaintiffs respectfully request that this honorable Court grant them
12 leave to exceed the limits for interrogatories and admissions set forth in Local Rule 33.1. FMA
13 apparently agrees with Plaintiffs as it concedes in its Proposed Discovery Plan that this is a complex
14 case that will need a "modification of the limitations on discovery provided under the Rules." In fact,
15 FMA admits that there will be a "need for extensive discovery" and that it is anticipated to take "in
16 excess of one year." Plaintiffs seek the Court's permission to have one set of twenty-five
17 interrogatories and one set of twenty-five requests for admissions for each of the patents at issue, both
18 offensive and defensive. After the initial set of twenty-five have been answered and received, plaintiffs
19 request permission to serve a second set of twenty-five interrogatories and requests for admissions to
20 clarify or further ascertain the scope of the responses given to the first set. Rather than the Court
21 investing an extraordinary amount of time and resources trying to flush out and flesh out the meaning
22 of critical terms and narrowing the issues, the parties should do this to the maximum extent possible.
23 The additional discovery sought will immensely help achieve this objective.

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26 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

27 The primary reason justifying the Motion to Exceed the Number of Interrogatories and
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1 Requests for Admissions is that the additional information will greatly aid claim construction. By
2 statute, each issued patent concludes with one or more claims that particularly point out and distinctly
3 claim the patented invention. 35 U.S.C.A. § 112(2) (1984). The claims define the “metes and bounds”
4 of the patented invention in modern patent claim practice. Risdale Ellis, Patent Claims §§ 4-9 (1949);
5 Anthony W. Deller, Patent Claims §§ 5-11 (2d ed. 1971); Burke Inc. v. Bruno Independent. Living
6 Aids, Inc., 183 F. 3d 1334, 1340; 51 USPQ2d 1295 (Fed. Cir. 1999); Zenith Laboratories, Inc. v.
7 Bristol-Meyers Squibb Co., 19 F. 3d 1418, 1424, 30 USPQ2d 1285 (Fed. Cir.), 1994 *cert. denied*, 513
8 U.S. 995, 115 S.Ct. 500, 130 L.Ed.2d 409 (1994). In Markman v. Westview Instruments, Inc., 517
9 U.S. 370, 116 S.Ct. 1384, 38 USPQ2d 1461 (1996), the Supreme Court ruled that the interpretation of
10 the language in a patent claim was a question of law and disputes as to the meaning of the language
11 were to be exclusively decided by a judge.
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14 The importance of claim construction cannot be overemphasized. It is a threshold issue for the
15 trial court because it shapes and often resolves key liability issues. In addition, it may narrow the
16 issues, it may guide the parties as to what issues are significant and what evidence is needed for trial.
17 *Guidelines for Patent Claim Construction: Post Phillips – The Basics of a Markman Hearing*, 14 Fed.
18 Cir. Bar J., Vol. 16(1) (2006).

19
20 The biggest problem in claims construction is determining the meaning of the language of the
21 claims (Augustine Med. v. Gayman Industries, 181 F. 3d 1291, 50 USPQ2d 1900 (Fed. Cir. 1999)),
22 determining the scope of the claims (Interactive Gift Express v. Compuserve, 231 F. 3d 859, 864, 56
23 USPQ2d 1647 (Fed. Cir. 2000)), or determining both the meaning and scope of the claims (IMS Tech.
24 Inc. v. Haas Automation, 206 F. 3d 1422, 1429, 54 USPQ2d 11229 (Fed. Cir. 2000)). Claims
25 construction centers on the words actually used in the claims. Johnson Worldwide Assn. v. Zebco
26 Corp., 175 F. 3d 989, 990, 50 USPQ2d 1607 (Fed. Cir. 1999).
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1 Unfortunately, the words in a patent do not have a universally correct meaning, *e.g.* different
2 words in a patent may have the same meaning (Tate Access Floors, Inc. v. Maxcess Technologies, Inc.,
3 222 F. 3d 958, 968, 55 USPQ2d 1513 (Fed. Cir. 2000)), or the same words in a patent may have
4 different meanings (CAE Screenplates v. Heinrich Fiedler GmbH & Co. KG, 224 F. 3d 1308, 1317, 55
5 USPQ 2d 1804 (Fed. Cir. 2000)). Words can have an acquired meaning from a variety of sources.
6 Vitronics Corp. v. Conceptronic, Inc., 90 F. 3d 1576, 1582, 39 USPQ2d 1573 (Fed. Cir. 1996).
7 Conversely, one or more of the same sources may prove that a word has not acquired a certain
8 meaning. Sources of word meanings include but are not limited to ordinary usage in the English
9 language, usage by a particular group (trade, technological, professional, scientific), a special
10 definition ascribed to the word by the patent applicant on the particular usage of the word in the patent
11 or its prosecution history. Worse, these sources are not given equal credence. For example, the patent
12 applicant (acting as a “lexicographer”) giving a word a special use or definition is by itself controlling
13 as to the meaning of the word in a claim. Renishaw PLC v. Marposs Societa’ per Azioni, 158 F. 3d
14 1243, 1249, 48 USPQ2d 1117 (Fed. Cir. 1998).

17 Based on the foregoing brief synopsis of the difficulties in interpreting patent claims, Plaintiffs,
18 for good cause, seek permission to exceed Local Rule 33.1’s discovery limits to allow fuller, more
19 comprehensive discovery regarding each patent infringement claim, both offensive and defensive, and
20 each antitrust and patent misuse claim.

22 The second reason for this Motion to Exceed the Number of Interrogatories and Requests for
23 Admissions under L.R. 33.1(a) is that in addition to ferreting out the meaning of words in a claim or
24 patent, the patent misuse and antitrust claims necessitate investigation into Defendants’ corporate
25 strategy, financial data, e-mail correspondence and relevant agreements with their Japanese partners
26 and other licensees. The limitation of LR 33.1 does not permit a fair and reasonable inquiry into
27 Fujitsu and FMA’s patent misuse, the antitrust issues and circumstances under which licenses are
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1 granted.

2 The third reason for this motion is to vastly improve the chances of the parties settling this case.
3 The claims in each patent may be subjected to alternative claims constructions or interpretations by the
4 parties. This can be a moving target. Discovery gives guidance to the parties that helps narrow the
5 issues or resolve the case without requiring extraordinary supervisory time and effort from the trial
6 judge. For example, Defendants have been trumpeting that none of their offending products are sold
7 on Guam. Yet, Plaintiffs have discovered and purchased a variety of Defendants' products on Guam
8 which brings us to the next reason for this motion.
9

10 The fourth reason for this motion is the indispensable need for jurisdictional discovery. There
11 is a broad spectrum of products that uses Defendants' microcontrollers. Plaintiffs' preliminary
12 investigation has found Defendants' computer chips or microcontrollers in products ranging from
13 blood glucose monitoring systems to automobiles to cellular telephones. These diverse products
14 contain microcontrollers Defendants expressly advertise on their website or in press releases.
15 Specifically, Plaintiffs purchased in Guam a blood glucose monitoring system that appears to be
16 featured prominently on Defendants' advertisements. See Exhibit A, Copy of receipt for purchase of
17 blood glucose monitoring system, photos of purchased blood glucose monitoring system, and Fujitsu
18 advertisement featuring blood glucose monitoring system. As Defendants state in their advertisement
19 touting the advantages of their microcontrollers, "[g]lucose monitors, home theatre remotes, security
20 systems, and thermostat controls are just a few examples of the hundreds of applications where our
21 new, expanded 8-bit MCUs have found a home." *Id.*
22

24 Additionally, Defendants' microcontrollers are an integral part of the electronic/computer
25 system of many automobiles. In particular, Defendants' microcontrollers are designed to be used with
26 the MOST (Media Oriented System Transport) Multimedia Car Infotainment system for installation in
27 automobiles, technology that "serves as the backbone technology of in-car infotainment systems." See
28

1 Exhibit B, Defendants' joint press release with Hyundai regarding MOST Multimedia Car
2 Infotainment system and BMW automobile materials describing the use of the MOST system in BMW
3 automobiles. As Defendants expressly claim, "MOST technology combined with Fujitsu components,
4 which are cutting edge in the automotive market, increases system flexibility and service configuration
5 speed for end users compared to existing state-of-the-art analogue systems." *Id.* Plaintiffs' preliminary
6 investigation reveals that the MOST system is in at least the Hyundai and BMW automobiles which are
7 sold in Guam, with the probability of many other automobiles. *Id.* Yet another use of Defendants'
8 microcontrollers in automobiles is as CAN and FlexRay controllers. *See Exhibit C*, Defendants' press
9 releases expressly advertising the CAN and Flex-Ray technology in their microcontrollers. CAN or
10 Controller-Area-Network and FlexRay are essentially network devices that permit the various
11 electronic components in an automobile to communicate with each other using a common framework.
12 These controllers control such items as the electronic dashboards, power windows, air conditioning
13 and power seats. *Id.* Indeed, Defendants publicly proclaim their microcontrollers' reputation for
14 reliability, "making them ideal for automobiles." *See Exhibit D*, Defendants' advertisement describing
15 advantages of their microcontrollers for automotive applications.

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18 Further, Defendants also ship their microcontrollers to Guam for purchase. In fact, Plaintiffs
19 purchased Defendants' infringing microcontrollers for delivery to Guam. *See Exhibit E*, Invoice
20 receipt demonstrating purchase of Defendants' microcontrollers for delivery to Guam. Thus,
21 Defendants' claims that none of their microcontrollers are found or sold in Guam are fully negated by
22 Plaintiffs' discovery and purchase of Defendants' microcontrollers in a large sample of available
23 products on Guam. Additional discovery will flush out other offending products as the offending
24 Fujitsu computer chips are embedded deep within a large variety of products.¹ All of this additional
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28 ¹ There is no other way to find out the complete listing of products and all the product brands
that contain the offending Fujitsu microcontrollers. Plaintiffs cannot depend on Defendants'

1 information will push/pull the parties towards more fruitful settlement negotiations.

2 The fifth reason for additional discovery is that it is permissible. "District court have wide
3 latitude in controlling discovery and [their] rulings will not be overturned in the absence of a clear
4 abuse of discretion". Cornwell v. Electra Cent. Credit Union, 439 F. 3d 1018, 1027 (9th Cir. 2006)
5 *citing* California v. Campbell, 138 F. 3d 772, 779 (9th Cir. 1998) *quoting* Volk v. D.A. Davidson & Co.,
6 816 F. 2d 1406, 1416-17 (9th Cir. 1987). *See also* University of West Virginia Board of Trustees v.
7 Vanvoorhies, 278 F. 3d 1288, 1304 (Fed. Cir. 2002) *citing* Advanced Cardiovascular Systems, Inc. v.
8 Medtronic, Inc., 265 F. 3d 1294, 1307 (Fed. Cir. 2001) ("District courts have great discretion over the
9 discovery process and over the mechanics of the trial process. We decline to interfere with a court's
10 management of the discovery process absent a showing of a clear abuse of discretion or extreme
11 prejudice.").

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14 Therefore, due to the complex nature of this patent litigation and the indispensable need for
15 both jurisdictional and fact discovery, Plaintiffs, for good cause, seek permission to exceed Local Rule
16 33.1's discovery limits to allow full, comprehensive discovery regarding: (1) *each* patent infringement
17 claim, both offensive and defensive; and (2) *each* antitrust and patent misuse claim.

18 Insofar as setting forth the proposed additional interrogatories and requests for admissions,
19 Plaintiffs respectfully submit that in the foregoing paragraphs the subject areas have been set forth.
20 And, because of the numerical limitation of twenty-five, much thought and analysis will be given prior
21 to propounding the interrogatories or requests due to this numerical limitation. In sum, the
22 interrogatories and requests will not be unduly burdensome or wasteful or trivial as the opportunity to
23 ask for them is too precious. And, much of them will be centered on the key words in the patents.
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27 advertising to discover all the products containing the offending computer chips or microcontrollers.
28 Obtaining such information through interrogatories and other discovery is not only convenient and
more efficient but the only practical, sure way to obtain this information.

1 However, should the Court wish to see the proposed additional admissions or requests to aid its
2 decision on this Motion, they shall be submitted.

3 Granting this motion will not result in undue delay or prejudice to Defendants because
4 discovery is currently in its initial stages. To date, only prediscovery disclosures (pursuant to Local
5 Rule 26.2) and requests for production have been served by the parties. In fact, allowing additional
6 discovery serves the sound principles of judicial economy and will allow the parties to narrow the
7 scope of their claims and to better define and hone the issues without having excessive court
8 involvement. Simply stated, thorough, comprehensive discovery serves the best interest of the Court
9 and all parties involved in this case and will improve the prospects for settlement.

10 Therefore, Plaintiffs respectfully request this Motion for Leave to Exceed Discovery Limits be
11 granted.
12

13 DATED at Hagåtña, Guam, on January 30, 2007.
14

15 **SHORE CHAN BRAGALONE, LLP**

16 **TEKER TORRES & TEKER, P.C.**

17 **UNPINGCO & ASSOCIATES, LLC**
18

19
20 By


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